

TEXAS APPRAISER LICENSING§
AND CERTIFICATION BOARD

vs.

BARRY WILLIAM JOHNSON
TX-1332156-R

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DOCKETED COMPLAINT NO.12-183

AGREED FINAL ORDER

On the 17th day of May, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the expired certification of Barry William Johnson (the "Respondent").

In order to conclude this matter, Barry William Johnson neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order ("AFO"). The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent Barry William Johnson was a Texas state certified residential real estate appraiser who held certification number TX-1332156-R, and was certified by the Board during all times material to the above-noted complaint.
2. On or about May 2nd, 2008 Respondent appraised real property located at: 11919 Sunset Lake Court, Houston, Texas 77065
3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board, which were received.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

7. The parties enter into the following consent order in accordance with TEX. OCC. CODE § 1103.458.

8. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

- a) USPAP Ethics Rule -- Respondent violated the record keeping provisions of the Ethics Rule because he failed to maintain a work file containing all data, information, and documentation necessary to support his opinions and conclusions;
- b) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand and market area trends;
- c) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to summarize his supporting rationale for his site value determination, nor provide any supporting documentation in the work file or any supporting analytical reasoning in his report;
- d) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements, did not provide supporting documentation in the work file and did not provide any supporting analytical reasoning for those conclusions and opinions;
- e) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) -- Respondent did not collect, verify, analyze and reconcile accrued depreciations. In general, recognized methods and techniques were not employed in the cost approach;
- f) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a) – Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Respondent has not provided supporting documentation nor his reasoning and a summary of his analysis of the sales comparison approach. Respondent also failed to make appropriate adjustments or made inappropriate adjustments to the sales he did use, and did not discuss his analysis and reasoning behind the adjustments he made or elected not to make;
- g) USPAP Standards 1-5(b) & 2-2(b)(viii); 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to analyze all sales of the property within 3 years prior to the effective date of the appraisal and did not reconcile the prior sales price of \$325,000 with his \$385,000 value conclusion; and,
- h) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in an appraisal report that was not credible or reliable.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. Respondent made material misrepresentations and omissions of material facts as prohibited by 22 TEX. ADMIN. CODE § 153.20(a)(9).
4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas appraiser residential certification be revoked, effective 5:00 p.m., May 17th, 2013

IT IS FURTHER ORDERED that beginning at 5:00 P.M., May 17th, 2013, the revocation is to be probated for eighteen (18) months, ending November 15th, 2014, subject to the following terms and conditions:

1. **TRAINEES.** Respondent shall not sponsor any real estate appraiser trainees during the entire eighteen (18) months of probation. Any current appraiser trainees Respondent sponsors shall be terminated immediately by filing the appropriate sponsorship termination paperwork with the Board no later than May 27th, 2013.
2. **EDUCATION.** On or before November 15th, 2013, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.
 - a. A minimum, 7 classroom-hour course entitled "Write It Right";
 - I. No examination shall be required; and,
 - b. A minimum, 15 classroom-hour course in the USPAP

II. No examination shall be required;

3. **MENTORSHIP.** On or before July 16, 2013, Respondent shall complete 10 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for the mentorship requirement. Respondent shall also submit a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees form on or before the due date listed for the mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion. The 10 hours of mentorship shall include:
 - a. Five (5) hours of mentorship in sales comparison data analysis, with 2.5 of those hours dealing with analysis, methods and techniques related to adjustments and the other 2.5 hours dealing with selection of comparable sales; and
 - b. Five (5) hours of mentorship in the cost approach, with at least 3 of those hours dealing with analysis, calculation, methods, techniques and reporting related to depreciation and obsolescence.
4. Fully cooperate with the Board's ongoing investigation(s) against William James Purdy, including providing all requested information and documentation Respondent may have in an accurate and truthful manner. If requested, Respondent must also provide truthful, complete and accurate testimony about William James Purdy, his appraisal practices, processes, and procedures and Respondent's experiences and professional dealings with William James Purdy (including information and experiences previously discussed with Board Staff). This includes, but is not limited to Respondent's knowledge and information about the property located at 6019 Schuler Street, Houston, Texas 77007 and the appraisal performed on it.
5. **EXPERIENCE LOG.** On or before, April 1st, 2014, Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the time period of December 1st, 2013 through March 1st, 2014, starting after the due dates for the education and mentorship. The log shall detail **all** real estate appraisal activities Respondent has conducted during the December 1st, 2013 through March 1st, 2014 period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments Respondent performs during the course of this three (3) month period within twenty (20) days of receiving any such request.
6. **ADMINISTRATIVE PENALTY.** On or before June 6th, 2013, Respondent shall pay to the Board an administrative penalty of two thousand dollars (\$2,000.00), by certified funds. However, one thousand dollars (\$1,000.00) of this penalty shall be

probated if by November 15th, 2013 Respondent submits to the Board a total of three, one page reports for each of the 2 classes and 1 for the mentorship period in which Respondent:

- a. Describes and explains what he learned from the applicable course or period of mentorship;
 - b. Describes what was previously deficient with his work product and appraisal practices; and,
 - c. Describes what steps he will take in his appraisal practice going forward to avoid further violations of USPAP and state law.
7. Fully and timely comply with all of the provisions of this Agreed Final Order; and
 8. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND RESPONDENT'S LICENSE/CERTIFICATION/REGISTRATION SHALL BE REVOKED EFFECTIVE ON THE DATE OF REVOCATION OF PROBATION AND THE FULL TERM OF THE REVOCATION WILL TAKE EFFECT IMMEDIATELY. The Board will notify the Respondent in writing of the failure to comply, and the immediate revocation of the license, certification, authorization or registration.

ANY SUCH REVOCATION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

Respondent is solely responsible for timely delivery to the Board of all documents necessary for compliance of this Agreed Final Order. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the Board of all the necessary documents. Respondent shall send all documents necessary for compliance by: (1) email to compliance.talcb@talcb.texas.gov, (2) fax to (512) 936-3966, attn: Compliance, or (3) certified mail return receipt requested to Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.



I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

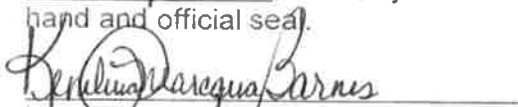
This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 8 day of May, 2013.


BARRY WILLIAM JOHNSON

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 8th day of May, 2013, by BARRY WILLIAM JOHNSON, to certify which, witness my hand and official seal.


Notary Public Signature

Kembra Marcqua Barnes
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 16th day of May, 2013.



Troy Beaulieu

Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 17 day of May, 2013.

Douglas Oldmixon

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17 day of May, 2013.

Walker Beard

Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board